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Before the
COPYRIGHT ROYALTY JUDGES
Washington, D.C.

In the Matter of	)	
	)	
Distribution of	)	CONSOLIDATED DOCKET NO.
Cable Royalty Funds	)	14-CRB-0010-CD/SD
	)	(2010-2013)
In the Matter of	)	
	)	
Distribution of	)	
Satellite Royalty Funds	)	

WORLDWIDE SUBSIDY GROUP LLC
REPLY IN SUPPORT OF
MOTION FOR SUBSTITUTION OF PARTIES

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The Settling Devotional Claimants ("SDC") oppose the very motion that they vociferously complained had not been filed by Worldwide Subsidy Group LLC dba Multigroup Claimants ("WSG").

The gist of the SDC argument is that the assignment of rights from Multigroup Claimants, a sole proprietorship of Alfred Galaz ("Multigroup Claimants"), *back* to WSG (whom originally conferred such rights to the sole proprietorship), is a transfer of "agency" rights that is invalid in the absence of approval by the underlying copyright owners. SDC at 2, et seq. The SDC's citation to "agency" law, and even its application thereof, is flawed, and the Judges have already rejected the SDC's argument in these proceedings.

A. The SDC cite to inapplicable "agency" law.

The first misstep of the SDC is to cite to the law of agency, as the agreements between WSG and underlying copyright owners are not "agency" agreements. In the hundreds of WSG agreements presented in these proceedings, the word "agency" *does not appear once*. What does appear, in literally *every* WSG agreement, is an "assignment" to WSG of the copyright owner's right to retransmission royalties. The SDC is aware of this fact.

The legal distinctions between agents and the assignees of property rights are significant. Agents are fiduciaries to their principals. "It is undisputed that an agent owes its principal 'a fiduciary duty to act loyally to the principal's benefit in all matters connected with the agency relationship.' Restatement (Third) of Agency Section 8.01 (2006)." *Monterey Bay Military Hous., LLC v. Pinnacle Monterey, LLC,* 116 F. Supp. 3rd 1010, 1025 (N.D. Cal. 2015).

By contrast to this fiduciary obligation, an assignee does not assume any of the personal liabilities of its assignor. "The general rule is that the mere assignment of rights under an executory contract does not cast upon the assignee any of the personal liabilities imposed by the

contract upon the assignor. (*Griffin v. Williamson*, 137 Cal. App. 2d 308, 315 [290 P.2d 361].)" *Walker v. Phillips*, (1962) 205 Cal. App. 2d 26, 32.

In addition to the fact that WSG's agreements state that the applicable rights and royalties are "assigned", and *never* state that WSG is acting as an agent, for WSG to be held to be an agent of any underlying copyright owner, such owners would have to retain the right to control WSG's conduct. Under California law, and under the law of every U.S. jurisdiction known by the undersigned, for a principal-agent relationship to exist, the principal must have the authority to exercise control over the agent.

> "An agent 'is anyone who undertakes to transact some business, or manage some affair, for another, by authority of and account of the latter, and to render an account of such transactions.' [Citation.] 'The chief characteristic of the agency is that of representation, the authority to act for and in the place of the principal for the purpose of bringing him or her into legal relations with third parties. [Citations.]' [Citation.] 'The significant test of an agency relationship is ***the principal's right to control the activities of the agent***. [Citations.] It is not essential that the right of control be exercised or that there be actual supervision of the work of the agent; the existence of the right establishes the relationship.' "

McCollum v. Friendly Hills Travel Center, (1985) 172 Cal. App. 3d 83, 91 (emphasis added).

Each of the WSG agreements clearly state that WSG's clients are assigning their rights to WSG. *Nowhere* do any of those agreements state or suggest that any underlying copyright owner is conferred a right to control any aspect of WSG's activities. In fact, were such provision to exist within the WSG agreements, WSG's ability to conduct itself would be hopelessly stalled, as each of hundreds of copyright owners whose rights were assigned to WSG could individually demand a different distribution methodology, different expert witnesses, different legal counsel, etc. That is not, nor has ever been, the substance of any of the WSG agreements, and for the SDC to suggest this by arguing the application of agency law, simply distorts reality. Literally

nothing in hundreds of WSG agreements confers any assignor a right to control WSG's activities, in any manner.

B. The underlying copyright owners expressly granted *WSG* the authority to pursue the royalties at issue. The Judges have already rejected *in this proceeding* the SDC's argument that underlying copyright owner approval was required, and collateral estoppel precludes any further challenge to an assignment of the royalty rights at issue.

As noted, the substitution sought by WSG's motion is the result of the sole proprietorship assigning *back* to WSG the rights WSG previously assigned to the sole proprietorship in 2015, i.e., the assignment was to the contracting entity whom had been originally authorized to collect the copyright owners' interests. It was not without purpose that WSG's moving brief stated that "even if the copyright claimants had a theoretical legal basis to object to any transfer, any theoretical argument was obviated by the very terms of agreement with WSG". Without exception, *all* underlying copyright owners expressly authorized *WSG* to pursue the royalties at issue in this proceeding.1

Nevertheless, taken to its logical end, the SDC's "agency" argument would deem WSG's initial assignment to Multigroup Claimants in 2015 as invalid for the same reasons asserted by the SDC here (i.e., no prior approval by underlying copyright owners). Both the SDC and MPAA have previously asserted such argument in this proceeding,2 but as already noted in

1 Even if the SDC's "agency" argument were applicable, which it is not, the proper entities to object would be the underlying copyright owners, not the SDC. That is, the SDC have no standing to object. Moreover, and as was also observed, no equitable reason exists to prohibit the January 2018 transfer. During the pendency of this proceeding, between the January 1, 2018 transfer of ownership of Multigroup Claimants' interests and the final distribution orders occurring in August and November of 2018, the interests of the underlying copyright claimants were represented by the same personnel, expert witnesses, and legal counsel, without qualification.

2 See, e.g., SDC's *Motion to Disqualify Multigroup Claimants and to Disallow Certain Claimants and Programs* at 5 (Oct. 11, 2016) ("IPG is an Agent, Not a Copyright Owner, and in

WSG's moving papers, such argument was expressly rejected by the Judges.3 Consequently, the law of the case principle precludes revisiting the issue of whether there must be approval of the January 2018 transfer of interests by the underlying copyright owners. Specifically, the law of the case doctrine generally prohibits a court from considering an issue that has already been decided by that same court or a higher court in the same case. *Hall v. City of Los Angeles*, 697 F.3d 1059, 1067 (9th Cir. 2012). Similarly, the principles of res judicata and collateral estoppel prevent the re-litigation of issues already litigated. See *U.S. v. Wells*, 347 F.3d 280, 285 (8th Cir. 2003). Thus, the issue has been resolved.

C. Even presuming that "agency" law applies, the SDC misapply California Civil Code § 2349.

Even presuming that "agency" law applies here, which it does not, the SDC gloss over one of the exceptions under which agency rights can be delegated. Specifically, subsection (3) states that an agent may delegate his powers to another "when it is the usage of the place to delegate such powers". While oddly phrased (it is an eighteenth century statute), the meaning of this provision is elucidated within the "venerable" case cited by the SDC, *Dingley v. McDonald*, 57 P. 574 (Cal. 1899).

In *Dingley*, the exception makes clear that the provision applies to the expected practice of delegating powers that were the subject of the agency: "No usage was shown for agents to

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Order for MGC to Petition to Represent Claimants in these Proceedings, MGC Was Required to Obtain Consent Directly from the Copyright Owners Before Filing the Petitions to Participate"); see also, MPAA's *Motion for Disallowance of Claims Made by Multigroup Claimants* at 19 (Oct. 11, 2016) ("Claimants Who Did Not Authorize Or Consent To MC Or SLP Acting As Their Agent In These Proceedings Must Be Dismissed").

3 *Ruling and Order Regarding Objections to Cable and Satellite Claims* at 13-16 (Oct. 23, 2017) ("The Judges find that MPAA's evidence and arguments do not support a general rule requiring consent from each of [WSG's] claimants in order to represent them in these proceedings.").

assign claims for collection, and we cannot assume that any such usage exists in San Francisco, where the suit was brought...." *Dingley*, at 576.

As has been oft-noted, the agreements between the copyright owners and WSG cover worldwide royalty collection, and it has been WSG's open practice to engage third parties to collect royalties outside the United States. The Judges have already acknowledged this practice by WSG in their rulings. See, e.g., *Ruling and Order Regarding Objections to Cable and Satellite Claims*, at 14 (Oct. 23, 2017). In fact, WSG has even engaged third parties for collection *in* the United States for particular Phase I categories where no methodological disagreements exist (PBS for non-commercial broadcasts category; Canadian Claimants Group for Canadian Claimants program category), and in twenty-two years, *no WSG client has ever objected to WSG's practice* of engaging third parties for collection because it is the norm for the industry and *expected*. That is, the prerequisites set forth by California Civil Code § 2349(3) are satisfied.

The SDC scarcely devote only a few sentences to the subject in their opposition. SDC at 4. Therein, the SDC assert "to the SDC's knowledge, the assignment of an agency agreement without the express consent of the claimants is unprecedented in copyright royalty proceedings." This statement, however, is completely false, as even the Judges can immediately recognize. Not only does the SDC statement run contrary to the prior rulings relating to Multigroup Claimants in this proceeding (see Section B., supra), but the SDC have been party to multiple proceedings involving the Motion Picture Association of America ("MPAA"), wherein the MPAA has openly acknowledged (even within its Written Direct Statements) that the vast majority of its programs are owned by parties that are not in privity with the MPAA, and with whom the MPAA has *never even communicated*. See *Ruling and Order Regarding Objections to Cable and Satellite*

Claims, at 40, et seq. (Oct. 23, 2017). For the SDC to claim that "it is not 'the usage of the place' for an agent to delegate powers to participate in copyright royalty proceedings without knowledge and consent of the claimant", misrepresents what WSG, the Judges, and every other participant in these proceedings knows to be the case. Id.

Consequently, even if Multigroup were subject to an erroneous application of California Civil Code § 2349, an exception articulated therein would relieve Multigroup Claimants of any obligation to seek approval of a subsequent transfer of Multigroup Claimants' rights.

D. Rather than address substantive issues, the SDC persist in making unsubstantiated allegations of fraud and misconduct.

Notably, the SDC conspicuously fail to even cite 37 C.F.R. § 360.4(c), the provision pursuant to which WSG's motion was brought, much less address the fact that the purpose of such provision is only to avoid "frustrating" contact with a claimant because of an outdated address.

Notably, the SDC fail to address that because Multigroup Claimants was a registered fictitious business name for Alfred Galaz, for Alfred Galaz to convey the interests of Multigroup Claimants, it *necessitates* that such interests vest with a different person or legal entity, and that denial of WSG's motion would be tantamount to the Judges prohibiting Alfred Galaz from conveying his personal interest, or risk injury to the rights being prosecuted. Literally no response from the SDC is forthcoming to such argument.

Rather, the SDC persist in their unsubstantiated allegations of misconduct and fraud, for no reason other than to further pepper the public record with such contentions as a "no consequence" means of defaming WSG and the Galaz family – there being "no consequence" because of the absolute privilege to defamation afforded to legal pleadings.

Notably, the SDC, its principals, its individual counsel, and its law firms, continue to shrug from uttering their allegations of misconduct and fraud outside of this context – as WSG has challenged them to do -- where they cannot hide behind the skirt of a rule that permits even malicious untruths to be published without consequence. In fact, the SDC continue to engage in their pattern and practice of unconscionable conduct, such as when SDC counsel Matthew MacLean incredibly explained that his purpose for contacting a bankruptcy trustee in Tulsa, Oklahoma in order to report "discrepancies" in the bankruptcy petition for the personal bankruptcy of Alfred Galaz, an 85-year old man, unnecessarily injecting strife into that octogenarian's life, was to comply with his "serious" oath to "do no falsehood or consent that any be done in Court". See *Declaration of Matthew J. MacLean in support of Settling Devotional Claimants' Opposition to Multigroup Claimants' Emergency Motion for Removal from Public Records and Sanctions Against SDC and its Counsel* at para. 3 (Mar. 27, 2020). Of course, Mr. MacLean has never explained *why* he was affirmatively monitoring Alfred Galaz's personal bankruptcy in Tulsa, Oklahoma, or why he would unnecessarily malign a young man in public pleadings (Ryan Galaz) by characterizing as "fraudulent" a documented transfer from Alfred Galaz to his grandson.

The answer to the SDC's motivations are no secret. Just repugnant.

CONCLUSION

For the reasons set forth herein, Worldwide Subsidy Group LLC hereby requests that the Judges formally substitute Worldwide Subsidy Group LLC dba Multigroup Claimants in the stead of Multigroup Claimants, a sole proprietorship of Alfred Galaz, in this proceeding.

Respectfully submitted,

July 10, 2020

_____/s/_____

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CERTIFICATE OF SERVICE

I certify that on July 10, 2020, I caused a copy of the foregoing pleading to be served on all parties registered to receive notice by eCRB by filing through the eCRB filing system.

_____/s/_____
Brian D. Boydston, Esq.

Proof of Delivery

I hereby certify that on Friday, July 10, 2020, I provided a true and correct copy of the Worldwide Subsidy Group Llc Reply In Support Of Motion For Substitution Of Parties to the following:

Canadian Claimants Group, represented by Lawrence K Satterfield, served via ESERVICE at lksatterfield@satterfield-pllc.com

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Public Television Claimants (PTC), represented by Ronald G. Dove Jr., served via ESERVICE at rdove@cov.com

National Association of Broadcasters (NAB) aka CTV, represented by John Stewart, served via ESERVICE at jstewart@crowell.com

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MPA-Represented Program Suppliers (MPA), represented by Gregory O Olaniran, served via ESERVICE at goo@msk.com

Signed: /s/ Brian D Boydston